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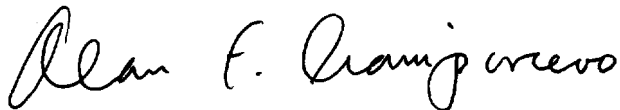
Dear Mr. Caton:

Re: *GN Docket No. 93-252 - Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*

On behalf of Pacific Bell and Nevada Bell, please find enclosed an original and six copies of their "Reply Comments" in the above proceeding.

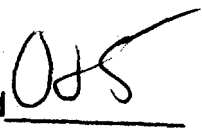
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Sincerely,



Enclosures

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In the Matter of

Implementation of Sections 3(n)  
and 332 of the Communications Act

Regulatory Treatment of Mobile  
Services

GN Docket No. 93-252

**REPLY COMMENTS OF PACIFIC BELL AND NEVADA BELL**

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## **SUMMARY**

Pacific Bell and Nevada Bell agree with those commenters that urge the Commission to reject imposing a spectrum cap that would apply to all the radio services offered by an individual company.

We also agree with those commenters that urge the Commission to make the PCS eligibility rules that apply to cellular providers also apply to wide-area Specialized Mobile Radio ("SMR") providers.

With respect to interoperability, the Commission should mandate that PCS providers have fair and non-discriminatory access to cellular analog out-of-territory networks indefinitely and to cellular analog in-territory networks during the 10-year build out period.

Finally, the Commission should amend Form 600 so that Schedules C and F are not required for PCS applications.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Implementation of Sections 3(n)  
and 332 of the Communications Act

Regulatory Treatment of Mobile  
Services

GN Docket No. 93-252

**REPLY COMMENTS OF PACIFIC BELL AND NEVADA BELL**

Pacific Bell and Nevada Bell hereby respond to  
selected issues raised in the comments in the above-captioned  
proceeding.

- I. THERE IS NO NEED FOR A SPECTRUM CAP APPLICABLE TO ALL RADIO  
SERVICES PROVIDED BY AN INDIVIDUAL COMPANY.

In its Further Notice of Proposed Rulemaking  
("FNPRM") the Commission requested comment on the need for a

general spectrum cap.<sup>1</sup> Commenters overwhelmingly opposed the imposition of a general spectrum cap.<sup>2</sup> We agree. At this point there is nothing in the record to support the need for a general spectrum cap for all commercial mobile radio services. Furthermore, over 200 MHz of spectrum will be available in the next several years.<sup>3</sup> A spectrum cap should only be considered if there is clear evidence of insufficient spectrum or anti-competitive behavior that a spectrum cap would rectify. Neither exists at this time.

II. REGULATORY PARITY REQUIRES THAT SMR PROVIDERS BE SUBJECT TO THE SAME RULES FOR ELIGIBILITY FOR PCS LICENSES AS THE CELLULAR PROVIDERS.

Sprint, Southwestern Bell, Bell Atlantic and New Par all object to the absence of a limit on the amount of spectrum that can be acquired by Specialized Mobile Service ("SMR") providers.<sup>4</sup> We agree. The same considerations that resulted in

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<sup>1</sup> In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, GN Docket No. 93-252 Further Notice of Proposed Rulemaking, released May 20, 1994, paras. 86-98. ("FNPRM")

<sup>2</sup> See e.g., Bell Atlantic, pp. 8-9; BellSouth, pp. 11-12; Air Touch, pp. 6-9; McCaw, p. 5; PageMart, p. 4; Motorola, pp. 4-7.

<sup>3</sup> Pub. L. No. 103-66, Title VI, §6001 Part B, Section 113.

<sup>4</sup> Sprint, p. 4; Southwestern Bell, pp. 15-17; Bell Atlantic, pp. 8-12; New Pav, pp. 16-19.

a limit in the amount of spectrum cellular providers could acquire to provide PCS also apply to SMR providers. As the Commission itself has noted, SMR, cellular and PCS are competitive services.<sup>5</sup> Under the current rules, SMR providers can acquire up to 40 MHz of spectrum for PCS in addition to their spectrum under Part 90 within the same territory. Cellular providers can only acquire 10 MHz of spectrum for PCS in the territory in which they operate.<sup>6</sup> In addition, as Bell Atlantic states, the current rules relating to SMRs actually impose barriers to competition in SMR services.<sup>7</sup> Pursuant to Section 90.603(c) of the Commission's rules wireline telephone common carriers are prohibited from applying for SMR licenses.<sup>8</sup> However, there is no reciprocal restriction on SMRs.

The Commission indicated that its rationale in establishing the rules that limit cellular participation in PCS was not based on the assumption that the current cellular providers would engage in anticompetitive behavior but rather to

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<sup>5</sup> In the matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Notice of Proposed Rulemaking, 7 FCC Rcd 5676, 5712 (1992).

<sup>6</sup> 47 CFR §24.204.

<sup>7</sup> Bell Atlantic, p. 10.

<sup>8</sup> 47 CFR §90.603(c).

promote competition. "We conclude that the public interest would be best served by maximizing the number of viable new entrants in a given market."<sup>9</sup> That reasoning supports restrictions on PCS eligibility to wide-area SMRs also. In enacting the Omnibus Budget and Reconciliation Act the Congress sought to enhance competition by ensuring that similar services were subject to similar regulation.<sup>10</sup> That objective will be furthered by making the PCS eligibility rules applicable equally to cellular providers and wide-area SMRs.

### III. PCS SHOULD HAVE THE ABILITY TO ROAM ONTO CELLULAR ANALOG NETWORKS.

In its FNPRM the Commission indicated that at the inception of cellular radio service, interoperability rules were adopted requiring that all cellular telephones be capable of operating on all cellular channels and be capable of successfully interacting with the base stations of all cellular radio service providers.<sup>11</sup> As the Commission noted, one of the

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<sup>9</sup> In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Memorandum Opinion and Order, para. 103 released June 13, 1994.

<sup>10</sup> H. R. Rep. No. 111, 103rd Congress, 1st Session 259-260 (1993).

<sup>11</sup> FNPRM, para. 56.



purposes of this requirement was "to ensure that customers would have the ability to 'roam' from one licensee's service area to another."<sup>12</sup> The Commission then requested comment on what, if any, commercial mobile services should be subject to mandatory interoperability requirements.<sup>13</sup>

Many of the Commenters opposed mandatory interoperability standards.<sup>14</sup> However, a few supported limited interoperability.<sup>15</sup> While we generally agree that it is best to let interoperability develop in response to market demand, there is one instance in which interoperability should be required. Because cellular providers have had a ten to twelve year head start, it is imperative that the FCC mandate that PCS providers have fair and non-discriminatory access to cellular analog out-of-territory networks indefinitely and to cellular analog in-territory networks during the 10-year build out period. This policy will benefit all customers because they will be able to access wireless services wherever they are even at the beginning

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<sup>12</sup> Id.

<sup>13</sup> Id. at para. 57.

<sup>14</sup> See e.g., BellSouth, p. 16; Southwestern Bell, p. 13; American Personal Communications, pp. 4-5; Ericsson Corporation, pp. 2-4.

<sup>15</sup> See EF Johnson Company, pp. 14-16; Brown and Schwaninger, p. 12.

of the PCS service offering. Absent such a policy, PCS providers will not have a fair opportunity to compete with entrenched cellular providers.

Market research and customer experience reveal that customers demand to use their wireless telephone wherever they go. As cellular networks have expanded across the nation, seamless national "roaming" service has become available to cellular wireless customers. The ability to roam is essential to public acceptance of PCS and to its competitiveness with cellular service. Without the ability to roam, especially as PCS networks are being built, PCS providers will only be offering an "island" service which will compare very unfavorably with cellular service and even with some of the Specialized Mobile Radio Services that are developing. PCS providers, however, may not be able to offer the necessary ubiquity that will permit true competition with cellular service.

There are two reasons why the ubiquity that is necessary for competition with cellular will be difficult to achieve. First, PCS providers will take several years to complete their wide area network construction. During the build out period, unless PCS subscribers are able to roam on existing cellular systems, PCS providers will not be able to offer ubiquitous service to their customers, resulting in limited

public acceptance of PCS. It is also possible that without mandatory roaming requirements, a competitive consortium of cellular companies might form and block roaming out-of-territory. A consortium may choose not to accommodate roaming customers from a PCS provider with which they compete in the PCS provider's licensed service area market. It could be to the consortium's economic advantage to limit a PCS provider's competitive position in its home territory by limiting the PCS provider's roaming options out-of-territory.

Cellular companies will have an advantage if PCS provides "islands of coverage". Cellular carriers clearly understand this potential market disadvantage that PCS providers may have. For example, Lee Cox, President of AirTouch, "estimated that it will take PCS carriers seven or eight years to deploy networks as ubiquitous as cellular and by that time cellular carriers will have improved their networks even further."<sup>16</sup>

When cellular service was introduced into the marketplace, roaming was easily achievable for two reasons. First, there was one technical standard for the delivery of

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<sup>16</sup> Charles F. Mason, AirTouch Execs Say PCS Will Play Small Role, Telephony, April 18, 1994, at 12.

cellular service, so there were no significant technical barriers to roaming. Second, there was no competition for cellular wireless mobile services. Thus, it was in the cellular providers' best interest to enter into roaming agreements to create a ubiquitous service. Roaming would only enhance their service offerings. Cellular carriers provided access to their networks in order to gain reciprocal roaming agreements. However, as noted above, there is great incentive for existing cellular carriers to maintain their head start and to delay a ubiquitous PCS offering for as long as possible. Other PCS providers will not be a fully satisfactory source for roaming agreements because they will just be starting their service, and they will not offer initially the ubiquity that the current cellular providers offer.

A solution to this significant problem would be achieved by allowing PCS providers to offer their customer access to wireless service on cellular analog networks (AMPS). This would be done by the use of a dual frequency/mode handset. Cellular companies would benefit from additional revenue from "PCS roamers", and PCS customers would benefit by having access to a ubiquitous wireless network service. This concept is similar to the Commission's position on cellular head start

through the reselling of cellular service.<sup>17</sup> Because the service has now evolved to national coverage, it is critical that PCS providers be given a fair opportunity to compete with entrenched cellular providers.

For these reasons, we urge the Commission to mandate this limited form of interoperability.

IV. FOR BROADBAND PCS APPLICATIONS ONLY SCHEDULE A SHOULD BE REQUIRED.

The Commission proposed to adopt a new form that will be used for all CMRS and private mobile radio service

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<sup>17</sup> In the matter of Petitions for Rulemaking Concerning Proposed Changes to the Commission's Cellular Resale Policies, CC Docket No. 91-133, Notice of Proposed Rulemaking and Order, 6 FCC Rcd. 1719, para. 16, 1991 ("With respect to facilities-based competitors in the cellular industry, one important public interest reason for prohibiting resale restrictions is to offset any competitive advantage one carrier may have because it is granted a construction permit prior to its competitor. Indeed, no one disputes the value of requiring resale prior to the time the second carrier in the market begins providing service to the public over its on facilities. If the lag time is significant between the first and second carrier's start of operations, the first carrier will have a significant opportunity to expand its coverage area while the second one builds out its system. Therefore, the rationale that supports resale of a competitor's services can continue to exist even after the second carrier's initial facility becomes operational.... However, once the second carrier is fully operational the rationale for prohibiting resale restrictions between facilities-based licensees may cease to exist.") See also 47 CFR §22.914.

applications.<sup>18</sup> Omnipoint pointed out that Schedules C and F of the proposed Form 600 conflict with the blanket licensing approach that the Commission has taken with respect to PCS licensing. Omnipoint recommended that Form 600 be modified to reflect that broadband PCS operators need only file Schedule A.<sup>19</sup> We agree. Part 24 clearly specifies that "applications for individual sites are not needed and will not be accepted."<sup>20</sup> Schedules C and F are contrary to this rule and should be eliminated for broadband PCS applications.

V. CONCLUSION

For the reasons stated above, the Commission should not impose a general spectrum cap. The eligibility rules that apply to cellular providers with respect to PCS should also apply to wide-area SMRs. A limited form of interoperability should be mandated to enable PCS service to compete effectively

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<sup>18</sup> FNPRM, para. 109.

<sup>19</sup> Omnipoint, p. 5.

<sup>20</sup> 47 CFR §24.11

with cellular service. Broadband PCS applicants should only be required to submit Schedule A with Form 600.

Respectfully submitted,

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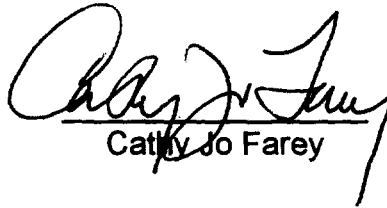
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### **CERTIFICATE OF SERVICE**

I, Cathy Jo Farey, hereby certify that a copy of the foregoing "REPLY COMMENTS OF PACIFIC BELL AND NEVADA BELL" in GN Dkt. 93-252 was mailed, postage prepaid, this 11th day of July, 1994, to the parties on the attached service list.



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